

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS S. ESPOSITO and
MARY M. ESPOSITO,

NOTICE OF REMOVAL

Plaintiffs,

Civil Action #:

v.

LOWE'S COMPANIES, INC.,

Defendant.

**TO: United States District Court
Eastern District of New York**

Pursuant to 28 U.S.C. §1441 and 1332, the action entitled *Thomas S. Esposito and Mary M. Esposito v. Lowe's Companies, Inc.* commenced in the Supreme Court of the State of New York for the County of Nassau, Index Number 606258/2021, is hereby removed by Defendant, Lowe's Home Centers, LLC (incorrectly sued as "Lowe's Companies, Inc.") ("Lowe's" or "Defendant"), from the Supreme Court of the State of New York, County of Nassau to the United States District Court for the Eastern District of New York by the filing of this Notice of Removal with the Clerk of the United States District Court for the Eastern District of New York.

Defendant, by and through its attorneys, Goldberg Segalla LLP, respectfully states the following as grounds for removing this action:

Procedural History

1. On May 19, 2021, the above-captioned civil action was commenced in the Supreme Court of the State of New York, County of Nassau. Plaintiffs' Summons and Verified Complaint were assigned Index Number 606258/2021 (the "State Court Action").

2. Upon information and belief, the Complaint was served on Lowe's via the New York Secretary of State on June 3, 2021.

3. Copies of all process, pleadings, and orders served upon the parties in the State

Court Action are attached as **Exhibit A**.

4. In the State Court Action, plaintiffs seek monetary damages for personal injuries allegedly sustained by plaintiff, Thomas S. Esposito, while shopping in the Lowe's Home Improvement retail store located at 700 Dibblee Drive, Garden City, New York 11530.

Parties

5. Plaintiffs are residents of Nassau County, New York.

6. Plaintiffs are domiciled in New York State and are therefore citizens of New York for diversity purposes.

7. Defendant is incorporated under the laws of the state of North Carolina and has a principal place of business in North Carolina.

8. More specifically, Lowe's Home Centers, LLC, is a limited liability company organized under the laws of North Carolina and with a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117.

9. The sole member of Lowe's Home Centers, LLC is Lowe's Companies, Inc.

10. Lowe's Companies, Inc. was incorporated under the laws of North Carolina and has a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117.

11. Accordingly, full diversity exists between the parties.

Jurisdiction

12. This Court has subject-matter jurisdiction of the action pursuant to 28 U.S.C. § 1332 because it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

Basis for Removal

13. This Court has subject-matter jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1441(a) because this is the

federal district court for the district embracing the place where the State Court Action is pending.

14. Though the Verified Complaint does not state the amount of damages that will be sought, in response to Lowe's CPLR 3017(c) Demand, plaintiffs claimed damages in the amount of \$2 million. Therefore, it is Lowe's good faith belief that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. Plaintiffs' response to Lowe's CPLR 3017(c) demand dated July 20, 2021 (and served on July 23, 2021) is attached as **Exhibit B**.

15. Lowe's has timely brought this Notice of Removal within 30 days of its receipt of plaintiffs' CPLR 3017(c) Response. *See* 28 U.S.C. § 1446(b). Prior to plaintiffs' CPLR 3017(c) Response, Lowe' received no pleading, amended pleading, motion, order, or other paper from which it could ascertain that the case was removable.

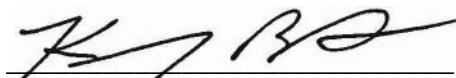
16. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on plaintiffs, by and through their attorneys of record, and is being filed with the Clerk of the Court of the State of New York, Supreme Court, County of Nassau.

17. No previous application has been made for the relief requested herein.

WHEREFORE, Lowe's files this Notice of Removal so that the State Court Action bearing Index No. 606258/2021 now pending in the State of New York, Supreme Court, County of Nassau be removed to this court for all further proceedings.

Dated: Buffalo, New York
August 9, 2021

GOLDBERG SEGALLA LLP



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